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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

DOUG LITTLE
CHAIRMAN

BOB STUMP
COMMISSIONER

BOB BURNS
COMMISSIONER

TOM FORESE
COMMISSIONER

ANDY TOBIN
COMMISSIONER

**IN THE MATTER OF THE
APPLICATION OF ARIZONA PUBLIC
SERVICE COMPANY FOR A
HEARING TO DETERMINE THE FAIR
VALUE OF THE UTILITY PROPERTY
OF THE COMPANY FOR
RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
RETURN THEREON, TO APPROVE
RATE SCHEDULES DESIGNED TO
DEVELOP SUCH RETURN.**

**IN THE MATTER OF FUEL AND
PURCHASED POWER
PROCUREMENT AUDITS FOR
ARIZONA PUBLIC SERVICE
COMPANY.**

DOCKET NO. E-01345A-16-0036

DOCKET NO. E-01345A-16-0123

Arizona Corporation Commission

DOCKETED

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**REPLY IN SUPPORT OF
EMERGENCY MOTION TO
COMPEL PRODUCTION OF
BARBARA LOCKWOOD
CALENDAR IN ADVANCE OF
LOCKWOOD DEPOSITION**

EFCA requested Barbara Lockwood's business calendar to ask her—in deposition—what statements she made in business meetings. The business calendar will reveal meetings she attended and who she met with. EFCA will ask her what she said in specific business meetings to specific people at specific times. This careful questioning will yield more information about her prior statements than simply asking her to recite everything she has ever said that is relevant to this rate case.

1 EFCA will also ask about whether her day-to-day business activities principally benefit
2 ratepayers or Pinnacle West's shareholders. Specific questioning based on real business calendar
3 entries is a better way to discover facts than unprepared cold-questioning.

4 Providing a business calendar will not cause harm to the Company or cause an undue
5 burden. The Company can print and disclose the document in a short amount of time. Instead of
6 this brief resolution, the Company withheld discovery and briefed ten pages about parties that have
7 not intervened in this case and did not request this discovery. The Company uses the word "harass"
8 or its variants 11 times. It complains that EFCA's business calendar request is a "gambit," a
9 "steady torrent," and "complex." It claims prior statement discovery regarding a key witness is
10 "vastly overbroad," "contrived," and a "fishing expedition." Lastly, the Company claims to be
11 "gravely concerned" because other entities—parties to neither this case nor this dispute—
12 committed "reckless public attacks" which apparently resulted in a newspaper publishing public
13 records about public figures receiving public money.

14 All this over one business calendar! EFCA suggests a focus on the simplicity of this
15 request.

16 **I. Lockwood's business calendar will assist with prior statement questioning.**

17 EFCA may discover anything reasonably calculated to lead to the discovery of admissible
18 evidence.¹ EFCA's Motion to Compel explained that Ms. Lockwood's business calendar will help
19 it question her about prior statements. Most business calendar entries identify a date, time, and
20 location for a meeting. They often identify a subject. And they often identify the people or groups
21 who will attend.

22 Discovering the business calendar lets EFCA ask specific questions about prior statements.
23 For example: "What did you tell John Smith about the value of rooftop solar energy when you met
24 him on June 15, 2015?" Any lawyer who has taken a deposition knows specific questions like that
25 yield more and better information than "Tell me about prior statements you have made relevant to
26 this case." With a business calendar available for questioning, EFCA can obtain more detailed
27 information about Lockwood's prior statements.

28

¹ Ariz. R. Civ. P. 26.

1 Page three of EFCA's initial Motion explains that it would use the business calendar to ask
2 meeting-specific questions about her statements. The Company did not respond to that argument.
3 Instead, it represents that EFCA relied on an "unexplained contention that Ms. Lockwood's
4 business calendar will somehow reveal these hypothetical inconsistencies."² That representation
5 is false. EFCA explained that it will use the business calendar to ask meeting-specific questions
6 about Ms. Lockwood's prior statements. The Company cannot refute the business calendar's value
7 for asking questions about prior statements. Instead it claims, incorrectly, that the EFCA did not
8 explain that at page three of its motion.

9 ***A. EFCA's time-limit is reasonably calculated to obtain admissible evidence.***

10 EFCA limited the time-scope of its request to focus on potentially relevant meetings. It
11 requested May 2015 through present. This includes the period the rate case was pending and the
12 year leading up to it. EFCA expects this will reveal: 1) relevant statements made during the test
13 year; 2) statements Lockwood made about the test year after it ended; and 3) statements about the
14 particular rate proposal in this case. Of course, her statements during the test year have obvious
15 potential relevance. Statements describing the test year are relevant even if they occurred
16 afterwards. For example, some of Lockwood's post-test-year meetings may have reviewed the
17 test year as a whole.

18 Finally, her statements about rate design and upcoming future projects are relevant
19 regardless of when she made them. Her pre-filed testimony discusses projections of the future,
20 including future economic ramifications of solar adoption. She also discusses future APS capital
21 projects. The Company opened the door to discovery about these future issues when it included
22 them in Ms. Lockwood's pre-filed testimony. EFCA has a right to discover what she said about
23 those issues. The Company presents no logical reason to limit that to the test year.

24 In any event, the Company waived any time objection by failing to raise it in its written
25 objection. Rule 34(b) requires parties objecting to production of documents to "identify the
26 reasons for any objection." Rule 34(b) also requires that "[i]f objection is made to part of an item
27 or category, the part shall be specified." Proper objections must "be *specific*, non-boilerplate, *and*

28 ² Arizona Public Service Company's Response in Opposition to EFCA's Motion to Compel (the "Response") at 5.

1 *supported by particularized facts* where necessary *to demonstrate the basis for the objection.*³

2 Arizona's Supreme Court has stated that "General objections, such as ... unreasonably
3 burdensome, oppressive, or vexations, ... irrelevant and immaterial, ... **are insufficient.**"⁴ Courts
4 repeatedly conclude that "pat, generic, nonspecific objections, intoning the same boilerplate
5 language, are inconsistent with both the letter and the spirit of the" Rules of Civil Procedure.⁵
6 "Boilerplate, generalized objections are inadequate and tantamount to not making any objection at
7 all."⁶ One court found it "clear" that a party engaging in such objections was "attempting to
8 subvert the purposes of discovery by ... asserting boilerplate objections, and unilaterally making
9 determinations of relevance."⁷

10 That observation applies with equal force to the Company. It made a unilateral relevance
11 determination. It refused to explain that determination in its objection or in personal consultation.
12 Even if that objection had merit, one wonders why the Company did not at least provide the portion
13 of the business calendar covered by the test year.

14 ***B. EFCA's request for a single, complete document reduced the burden of***
15 ***discovery.***

16 The Company also complains that EFCA requested a complete calendar rather than only
17 business calendar entries reflecting meetings Lockwood actually attended. The Company waived
18 this objection by failing to state it in writing before the objection deadline. It also never produced
19 the portion of Ms. Lockwood's business calendar reflecting those meetings. Nor did it offer to in
20 personal consultation.

21 Also, the Company's proposed attended-meetings-only restriction would increase the
22 burden of discovery. It can only possibly comply with that restriction if Ms. Lockwood accurately
23 remembers whether she attended every meeting on her business calendar. Ms. Lockwood would
24 then have to personally sift through every entry. The burden of responding to that data request

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27 ³ *Lynn v. Monarch Recovery Mgmt., Inc.*, 285 F.R.D. 350, 356 (D. Md. 2012).

⁴ *Cornet Stores v. Superior Court In & For Yavapai Cty.*, 108 Ariz. 84, 86, 492 P.2d 1191, 1193 (1972).

⁵ *Obiajulu v. City of Rochester*, 166 F.R.D. 293, 295 (W.D.N.Y.1996).

⁶ *Walker v. Lakewood Condominium Owners Ass'n*, 186 F.R.D. 584, 587 (C.D.Cal.1999).

⁷ *Klayman v. Judicial Watch, Inc.*, 256 F.R.D. 258, 262 n.6 (D.D.C.).

1 would far exceed EFCA's previous request where the Company could just print the business
2 calendar.

3 Finally, entries for meetings Ms. Lockwood did not attend may lead to relevant information
4 about how she spends her time. For example, if she has a pattern of canceling rate-payer benefitting
5 meetings to address issues for Pinnacle West shareholders, that is quite relevant to the allocation
6 of her salary.

7 **II. Ms. Lockwood's business calendar is relevant to her salary allocation.**

8 The Company requested affirmative relief based on Ms. Lockwood's compensation in that
9 it seeks recovery of some portion of her compensation from ratepayers. Recognizing that it put
10 Ms. Lockwood's compensation in issue, the Company concedes that how Ms. Lockwood uses her
11 time is relevant.⁸ It admits that EFCA may ask about that at deposition.⁹

12 Rule 26 governs the scope, timing, and methods of discovery. Rule 26(b)(1)(A) allows
13 discovery which relates to the "claim or defense of any other party." "And 'relevance' for
14 discovery purposes is quite broad, not limited to evidence that is admissible at trial but including
15 information that may be useful solely because it reasonably may lead to admissible evidence."¹⁰
16 The Company made a claim to recover some of Lockwood's salary from ratepayers. EFCA can
17 discover the basis for the Company's claim.

18 Rule 26 also allows the party seeking discovery discretion to choose between written
19 discovery and deposition. Rule 26(d) lets parties use any "method[] of discovery" in "any
20 sequence." Rule 26(a) also lets a party discover relevant information by any method allowed by
21 rule. This includes written discovery and deposition.

22 Because the Company admitted Ms. Lockwood's use of time is a fair topic for deposition,
23 it appears to acknowledge the issue is relevant. Because the issue is relevant, EFCA may seek
24 production of her business calendar and ask about it in deposition.

25 In fact, using both methods is efficient. EFCA can use the business calendar to identify
26 activities Ms. Lockwood regularly conducts and ask about them. By getting a general picture of

27 ⁸ Response at 8:1-2.

28 ⁹ Response at 8:1-2.

¹⁰ *Norwest Bank (Minnesota), N.A. v. Symington*, 197 Ariz. 181, 185, ¶ 15, 3 P.3d 1101, 1105 (App. 2000) (citing *Brown v. Superior Court*, 137 Ariz. 327, 332, 670 P.2d 725, 730 (1983)).

1 what she does in advance, EFCA can ask better questions in less time. Without the business
2 calendar, EFCA would have to waste valuable (and limited) deposition time asking basic questions
3 that written discovery could have covered.

4 ***A. EFCA can discover evidence on salary allocation.***

5 EFCA can discover whether the Company properly allocated Lockwood's salary without
6 first knowing the answer. In fact, that is the purpose of discovery. "[T]hrough the course of
7 discovery," parties commonly "realize[] a new claim or defense" exists.¹¹ EFCA does not know
8 whether the Company properly allocates Ms. Lockwood's salary or not. But the Company has
9 allocated some portion of her compensation and EFCA has a right to check that allocation.

10 ***B. The Company's concerns about the accuracy of its own business records should***
11 ***not block discovery.***

12 Perfect evidence almost never exists. So the Company's complaint that Ms. Lockwood's
13 business calendar may not be "an accurate measure of how working time is actually allocated"
14 fails. The business calendar contains information about how she spends her time. That is all it
15 takes to be discoverable.¹²

16 **III. The Company cannot support its confidentiality claims.**

17 The Company bears the burden of proving its confidentiality claim. As the party resisting
18 discovery, the Company bears the burden "to show that discovery should not be made."¹³ Arizona
19 Courts consistently hold that "the burden of proving the validity of the objection is upon the
20 objecting party."¹⁴ To protect information as a trade secret, the Company must prove: 1) it takes
21 reasonable steps to protect the information as secret; 2) the information has economic value
22 because it is a secret; and 3) that information is not readily ascertainable by other means.¹⁵ The
23 Company does not address any of these factors.

24 Even if some responsive information were secret, the Company does not explain why it did
25 not disclose it subject to a confidential or highly confidential designation pursuant to a stipulated

26 ¹¹ *McCarty v. Hosp. Corp. of Am.*, 580 N.E.2d 228, 231 (Ind. 1991).

27 ¹² *Ariz. R. Civ. P.* 26.

28 ¹³ *Tury v. Superior Court*, 19 *Ariz. App.* 169, 171, 505 P.2d 1060, 1061 (1973).

¹⁴ *Cornet Stores v. Superior Court In & For Yavapai County*, 108 *Ariz.* 84, 86, 492 P.2d 1191, 1193 (1972).

¹⁵ *A.R.S.* § 44-401(4).

1 protective agreement. On November 18, 2016, the Company and EFCA entered a standard
2 protective agreement to foster disclosure of "highly confidential" information that "could be used
3 to gain a competitive market advantage."¹⁶

4 The Highly Confidential classification includes:

- 5 • Access by only a limited number of attorneys and experts
- 6 • No sharing the document with sales or marketing staff
- 7 • Filing the document under seal in commission proceedings
- 8 • No disclosure, including public disclosure

9 To be clear, EFCA doubts that any truly confidential material exists. But if it does, the Company
10 could have protected it with the existing protective agreement.

11 Relatedly, the Company's harassment claim appears focus on a fear that EFCA would
12 publish information from Ms. Lockwood's business calendar. If that were a genuine concern, the
13 Company should have availed itself of the confidential designation in the protective agreement. It
14 prevents public disclosure absent order of this Commission.

15 Finally, the Company waived both of these claims by failing to assert them in its written
16 objection or during personal consultation. It should have discussed these concerns with counsel
17 before briefing a conspiracy theory.

18 **Conclusion**

19 Ms. Barbara Lockwood is the Company's principal executive witness. Her business
20 calendar is useful to depose her and to cross examine her. It provides EFCA a specific launching
21 point to ask about prior statements. It also gives specific information for questions about how she
22 uses her time. The Company should produce it no later than December 13.

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¹⁶ Ex. 1 (Protective Agreement) at 4.

Respectfully submitted this 12th day of December, 2016.



Court S. Rich
Rose Law Group pc
Attorney for Energy Freedom Coalition of America

**Original and 13 copies filed on
the 12th day of December, 2016 with:**

Docket Control
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

*I hereby certify that I have this day served a copy of the foregoing document on all parties of
record in this proceeding by regular or electronic mail to:*

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EXHIBIT 1

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 DOUG LITTLE - Chairman
4 BOB STUMP
5 BOB BURNS
6 TOM FORESE
7 ANDY TOBIN

8 IN THE MATTER OF THE APPLICATION
9 OF ARIZONA PUBLIC SERVICE
10 COMPANY FOR A HEARING TO
11 DETERMINE THE FAIR VALUE OF THE
12 UTILITY PROPERTY OF THE COMPANY
FOR RATEMAKING PURPOSES, TO FIX A
JUST AND REASONABLE RATE OF
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DOCKET NO. E-01345A-16-0036

13 IN THE MATTER OF FUEL AND
14 PURCHASED POWER PROCUREMENT
15 AUDITS FOR ARIZONA PUBLIC SERVICE
COMPANY.

DOCKET NO. E-01345A-16-0123

PROTECTIVE AGREEMENT

16
17 The Energy Freedom Coalition of America, LLC ("EFCA") has requested access to
18 certain documents, data, studies, and other materials, some of which Arizona Public Service
19 Company ("APS" or "Company") or its affiliates considers to be of a proprietary, confidential
20 or legally protected nature as defined below. Some of the Confidential Information that falls
21 within the scope of EFCA's request may also be considered by the Company to be Highly
22 Confidential Information, as defined below. APS also foresees the possibility of seeking
23 Confidential Information from EFCA during the course of this matter.

24 In order to facilitate the exchange of Confidential information between APS and
25 EFCA (collectively referred to as the "Parties"), including but not limited to, Highly
26 Confidential Information, the Parties agree to the terms of this Protective Agreement
27 ("Agreement") as follows:

1 **1. (a) Confidential Information.**

2 All documents, data, studies and other materials furnished pursuant to any
3 requests for information, subpoenas or other modes of discovery (formal or informal),
4 including depositions, and other requests for information, that are claimed to be proprietary or
5 confidential (herein referred to as "Confidential Information"), shall be so marked by the
6 providing party by stamping the same with a "Confidential" designation. Confidential
7 Information provided in a computer-readable data file shall be so-labeled on the face of any
8 disc containing the file and in any e-mail transmitting the file, and the data file itself shall be
9 identified in a conspicuous manner as containing "Confidential Information" to the extent
10 reasonably practicable. Moreover, to the extent responsive materials contain personally
11 identifiable information about individual customers, that information shall be redacted from
12 the materials. In addition, all notes or other materials that refer to, derive from, or otherwise
13 contain parts of the Confidential Information will be marked by the receiving party as
14 Confidential Information. Access to and review of Confidential Information shall be strictly
15 controlled by the terms of this Agreement.

16 **(b) Use of Confidential Information.** All persons who may be entitled to
17 review, or who are afforded access to any Confidential Information by reason of this
18 Agreement, shall neither use nor disclose the Confidential Information for purposes of
19 business or competition, or any purpose other than the purpose of preparation for and conduct
20 of proceedings in the above-captioned docket and all subsequent appeals, and shall keep the
21 Confidential Information secure as confidential or proprietary information and in accordance
22 with the purposes, intent and requirements of this Agreement.

23 **(c) Persons Entitled to Review.** Each party that receives Confidential
24 Information pursuant to this Agreement must limit access to such Confidential Information to
25 (1) attorneys employed or retained by the party in the proceedings and the attorneys' staff; (2)
26 experts, consultants and advisors, including in-house employees who need access to the
27 material to assist the party in the proceedings; (3) employees of the party who are directly
28 involved in the proceedings, provided that counsel for the party represents that no such

1 employee is engaged in the sale or marketing of that party's products or services.

2 (d) **Nondisclosure Agreement.** Any party, person, or entity that receives
3 Confidential Information pursuant to this Agreement shall not disclose such Confidential
4 Information to any person, except persons who are described in section 1(c) above and who
5 have signed a nondisclosure agreement in the form which is attached hereto and incorporated
6 herein as Exhibit "A."

7 The nondisclosure agreement for Confidential Information (Exhibit "A") shall require
8 the person(s) to whom disclosure is to be made to read a copy of the Protective Agreement
9 and to certify in writing that they have reviewed the same and have consented to be bound by
10 its terms. The agreement shall contain the signatory's full name, employer, job title and job
11 description, business address and the name of the party with whom the signatory is
12 associated. Such agreement shall be delivered to counsel for the producing party before
13 disclosure is made. An attorney who makes Confidential Information available to any person
14 listed in subsection (c) above shall be responsible for having each such person execute an
15 original of Exhibit "A" and a copy of all such signed Exhibit "A"s shall be sent to Company
16 promptly after execution.

17 2. (a) **Notes.** Limited notes regarding Confidential Information may be taken
18 by counsel and experts for the express purpose of preparing pleadings, cross-examinations,
19 briefs, motions and argument in connection with this proceeding, or in the case of persons
20 designated in section 1(c) of this Protective Agreement, to prepare for participation in this
21 proceeding. Such notes shall then be treated as Confidential Information for purposes of this
22 Agreement, and shall be destroyed after the final settlement or conclusion of the proceedings
23 in accordance with subsection 2(b) below.

24 (b) **Return.** All notes, to the extent they contain Confidential Information
25 and are protected by the attorney-client privilege or the work product doctrine, shall be
26 destroyed after the final settlement or conclusion of the proceedings. The party destroying
27 such Confidential Information shall advise the providing party of that fact within a reasonable
28 time from the date of destruction.

1 3. **Highly Confidential Information.** Any person, whether a party or non-party,
2 may designate certain competitively sensitive Confidential Information as "Highly
3 Confidential Information" if it determines in good faith that it would be competitively
4 disadvantaged by the disclosure of such information to its competitors. Highly Confidential
5 Information includes, but is not limited to, documents, pleadings, briefs and appropriate
6 portions of deposition transcripts, which contain information that is protected by a pre-
7 existing confidentiality agreement with a third party or could otherwise be used to obtain a
8 competitive market advantage.

9 Parties must scrutinize carefully responsive documents and information and limit their
10 designations as Highly Confidential Information to information that is directly covered by a
11 pre-existing confidentiality agreement or otherwise truly might impose a serious business risk
12 if disseminated without the heightened protections provided in this section. The first page and
13 individual pages of a document determined in good faith to include Highly Confidential
14 Information must be marked by a stamp that reads:

15 **"HIGHLY CONFIDENTIAL"**

16 Placing a "Highly Confidential" stamp on the first page of a document indicates only
17 that one or more pages contain Highly Confidential Information and will not serve to protect
18 the entire contents of a multi-page document. Each page that contains Highly Confidential
19 Information must be marked separately to indicate Highly Confidential Information, even
20 where that information has been redacted. The unredacted paper versions of each page
21 containing Highly Confidential Information, and provided under seal, should be submitted on
22 paper distinct in color from non-confidential information and "Confidential Information"
23 described in Section 1 of this Protective Agreement. Highly Confidential Information
24 provided in a computer-readable data file shall be so-labeled on the face of any disc
25 containing the file and in any e-mail transmitting the file, and the data file itself shall be
26 identified in a conspicuous manner as containing "Highly Confidential Information" to the
27 extent reasonably practicable.

28 Parties seeking disclosure of Highly Confidential Information must designate the

1 person(s) to whom they would like the Highly Confidential Information disclosed in advance
2 of disclosure by the providing party. Such designation may occur through the submission of
3 Exhibit "B" of the non-disclosure agreement for Highly Confidential Information identified
4 in Section 1(d). Parties seeking disclosure of Highly Confidential Information shall not
5 designate more than: (1) a reasonable number of in-house attorneys who have direct
6 responsibility for matters relating to Highly Confidential Information; (2) a reasonable
7 number of in-house experts and employees who need access to the material to assist the party
8 in the proceedings; and, (3) a reasonable number of outside counsel and outside experts to
9 review materials marked as "Highly Confidential." The Exhibit "B" also shall describe in
10 detail the job duties or responsibilities of the person being designated to see Highly
11 Confidential Information and the person's role in the proceeding. Highly Confidential
12 Information may not be disclosed to persons engaged in the sale or marketing of products or
13 services on behalf of any party.

14 Any party providing either Confidential Information or Highly Confidential
15 Information may object to the designation of any individual as a person who may review
16 Confidential Information and/or Highly Confidential Information. Such objection shall be
17 made in writing to counsel submitting the challenged individual's Exhibit "A" or "B". Any
18 such objection must demonstrate good cause to exclude the challenged individual from the
19 review of the Confidential Information or Highly Confidential Information. Written response
20 to any objection shall be made within two (2) business days after receipt of an objection. If,
21 after receiving a written response to a party's objection, the objecting party still objects to
22 disclosure of either Confidential Information or Highly Confidential Information to the
23 challenged individual, the Commission shall determine whether Confidential Information or
24 Highly Confidential Information must be disclosed to the challenged individual.

25 Copies of Highly Confidential Information may be provided to the in-house attorneys,
26 in-house experts, outside counsel and outside experts who have signed Exhibit "B".

27 Persons authorized to review the Highly Confidential Information will maintain the
28 documents and any notes reflecting their contents in a secure location to which only

1 designated counsel and experts have access. No additional copies will be made, except for
2 use during hearings and then such disclosure and copies shall be subject to the provisions of
3 Section 5. Any testimony or exhibits prepared that reflect Highly Confidential Information
4 must be maintained in the secure location until removed to the hearing room for production
5 under seal. Unless specifically addressed in this section, all other sections of this Protective
6 Agreement applicable to Confidential Information also apply to Highly Confidential
7 Information.

8 **4. Objections to Admissibility.** The furnishing of any document, data, study or
9 other materials pursuant to this Protective Agreement shall in no way limit the right of the
10 providing party to object to its relevance or admissibility in proceedings before the
11 Commission or any judicial body.

12 **5. Disclosure of Information to the Public.** The Confidential Information
13 provided pursuant to this Agreement, including any Highly Confidential Information, shall
14 not be disclosed to any person not authorized to review it under the terms of this Agreement,
15 nor shall it be made a part of the public record in the above captioned dockets, or in any other
16 administrative or legal proceeding, unless receiving party provides producing party with five
17 (5) business days written notice that it challenges the producing party's designation of the
18 information as legally protected and intends that certain, specifically identified information
19 shall be subject to wider dissemination or public disclosure. Upon the expiration of five (5)
20 business days from the date such written notice is received by producing party, any
21 Confidential Information specifically identified in the notice as subject to public disclosure
22 may become part of the public record in this docket, unless producing party initiates a
23 protective proceeding under the terms of Paragraph 6 to this Agreement.

24 **6. Protective Proceedings to Prevent Disclosure to the Public.** In the event that
25 producing party seeks to prevent disclosure of Confidential Information, including Highly
26 Confidential Information, pursuant to Paragraph 5 above, producing party shall file within
27 five (5) business days of receiving written notice of the receiving party's intent to disclose
28 such information, a motion presenting the specific grounds upon which it claims that the

1 Confidential Information should not be disclosed or should not be made a part of the public
2 record. The receiving party shall have an opportunity to respond to the motion. The motion
3 may be ruled upon by either the Commission or an assigned ALJ. The producing party may
4 provide to the Commission or the ALJ, the Confidential Information referenced in the motion
5 without waiver of its position that the information should be kept confidential under the terms
6 of this Agreement. Any Confidential Information so provided shall be filed and kept under
7 seal for the purpose of permitting inspection by the Commission or the ALJ before ruling on
8 the motion.

9 Notwithstanding any determination by the ALJ or the Commission that any
10 Confidential Information provided pursuant to this Agreement should be made a part of the
11 public record or otherwise disclosed, such disclosure shall not occur for a period of five (5)
12 business days after such determination so that the providing party may seek judicial relief
13 from the ALJ's or the Commission's decision. Upon expiration of the five (5) day period, the
14 Commission may release the information to the public unless the producing party has
15 received a stay or determination from a court of competent jurisdiction that the Confidential
16 Information should not be disclosed.

17 7. (a) **Receipt into Evidence.** Provision is hereby made for receipt into
18 evidence in this proceeding materials claimed to be confidential in the following manner:

- 19 (1) Prior to the use of or substantive reference to any Confidential
20 Information or Highly Confidential Information, the parties
21 intending to use such Information shall make that intention known
22 to the providing party.
- 23 (2) The requesting party and the providing party shall make a good-
24 faith effort to reach an agreement so the Information can be used
25 in a manner which will not reveal its confidential or proprietary
26 nature.
- 27 (3) If such efforts fail, the providing party shall separately identify
28 which portions, if any, of the documents to be offered or

1 referenced shall be placed in a sealed record.

2 (4) Only one (1) copy of the documents designated by the providing
3 party to be placed in a sealed record shall be made.

4 (5) The copy of the documents to be placed in the sealed record shall
5 be tendered by counsel for the providing party to the Commission,
6 and maintained in accordance with the terms of this Agreement.

7 (b) **Seal.** While in the custody of the Commission, materials containing
8 Confidential Information shall be marked "CONFIDENTIAL – UNDER PROTECTIVE
9 AGREEMENT IN DOCKET NO. E-01345A-16-0036" and Highly Confidential Information
10 shall be marked "HIGHLY CONFIDENTIAL – USE RESTRICTED PER PROTECTIVE
11 AGREEMENT IN DOCKET NO. E-01345A-16-0036" and shall not be examined by any
12 person except under the conditions set forth in this Agreement.

13 (c) **In Camera Hearing.** Any Confidential Information or Highly
14 Confidential Information that must be orally disclosed to be placed in the sealed record in this
15 proceeding shall be offered in an in camera hearing, attended only by persons authorized to
16 have access to the information under this Agreement. Similarly, any cross-examination on or
17 substantive reference to Confidential Information or Highly Confidential Information (or that
18 portion of the record containing Confidential Information or Highly Confidential Information
19 or references thereto) shall be received in an in camera hearing, and shall be marked and
20 treated as provided herein.

21 (d) **Access to Record.** Access to sealed testimony, records and information
22 shall be limited to the ALJ, Commissioners, and their respective staffs, and persons who are
23 entitled to review Confidential Information or Highly Confidential Information pursuant to
24 Subsection 1(c) above and have signed an Exhibit "A" or "B", unless such information is
25 released from the restrictions of this Agreement either through agreement of the parties or
26 after notice to the parties and hearing, pursuant to the ruling of the ALJ, the order of the
27 Commission and/or final order of a court having final jurisdiction.

28 (e) **Appeal/Subsequent Proceedings.** Sealed portions of the record in the

1 proceedings may be forwarded to any court of competent jurisdiction for purposes of an
2 appeal, but under seal as designated herein for the information and use of the court. If a
3 portion of the record is forwarded to a court, the providing party shall be notified which
4 portion of the sealed record has been designated by the appealing party as necessary to the
5 record on appeal.

6 (f) **Return.** Unless otherwise ordered, Confidential Information and Highly
7 Confidential Information, including transcripts of any depositions to which a claim of
8 confidentiality is made, shall remain under seal, shall continue to be subject to the protective
9 requirements of this Agreement, and shall, at the providing party's discretion, be returned to
10 counsel for the providing party, or destroyed by the receiving party, within thirty (30) days
11 after final settlement or conclusion of the proceedings. If the providing party elects to have
12 Confidential Information or Highly Confidential Information destroyed rather than returned,
13 counsel for the receiving party shall verify in writing that the material has in fact been
14 destroyed.

15 8. **Use in Pleadings.** Where references to Confidential Information or Highly
16 Confidential Information in the sealed record or with the providing party is required in
17 pleadings, briefs, arguments or motions (except as provided in Section 6), it shall be by
18 citation of title or exhibit number or some other description that will not disclose the
19 substantive Confidential Information or Highly Confidential Information contained therein.
20 Any use of or substantive references to Confidential Information or Highly Confidential
21 Information shall be placed in a separate section of the pleading or brief and submitted to the
22 ALJ or the Commission under seal. This sealed section shall be served only on counsel of
23 record and parties of record who have signed the nondisclosure agreement set forth in Exhibit
24 "A" or "B". All of the restrictions afforded by this Agreement apply to materials prepared
25 and distributed under this section.

26 9. **Summary of Record.** If deemed necessary by the Commission, the providing
27 party shall prepare a written summary of the Confidential Information or Highly Confidential
28 Information referred to be placed on the public record.

1 **10. No Admission of Privileged or Confidential Status.** By agreeing to this
2 Agreement, neither EFCA nor any Party is admitting or agreeing that any of the materials or
3 communications designated as "Confidential" or "Highly Confidential" Information are,
4 either in fact or as a matter of law, a trade secret or of a proprietary, confidential or legally
5 protected nature.

6 **11. Designated Contacts.**

7 A. EFCA's designated contacts for written notice pertaining to this Agreement are:

8 Court S. Rich
9 Rose Law Group pc
10 7144 East Stetson Drive, Suite 300
11 Scottsdale, Arizona 85251
12 CRich@roslawgroup.com

13 B. APS's designated contacts for written notice pertaining to this Agreement are:

14 Linda J. Benally
15 Pinnacle West Capital Corporation
16 Law Department
17 400 North 5th Street, MS 8695
18 Phoenix, Arizona 85004
19 Linda.Benally@pinnaclewest.com

20 APS State Regulation and Compliance
21 Attn: Kerri Carnes
22 400 North 5th Street, MS 9712
23 Phoenix, Arizona 85004
24 Ratecase@aps.com

25 **12. Breach of Agreement.** Any Party, in any legal action or complaint it files in
26 any court alleging breach of this Agreement shall, at the written request of the Commission,
27 name the Arizona Corporation Commission as a Defendant therein.

28 **13. Remedies.** The Parties acknowledge and agree that an exclusive remedy of
money damages would not be a sufficient remedy for any breach of this Agreement, and that
in addition to all other remedies to which the Producing Party may be entitled, each such
Producing Party may be entitled to: (a) apply to the ALJ or the Commission, as appropriate,
for sanctions against the Other Party and its legal counsel; and (b) specific performance

1 and/or injunctive or other relief as a remedy. Any equitable relief sought or secured
2 hereunder shall not bar recovery of other remedies available at law or in equity, including
3 money damages.

4 **14. Non-Termination.** The provisions of this Agreement shall not terminate at the
5 conclusion of this proceeding.

6 DATED this 7th day of November, 2016.

7 ENERGY FREEDOM COALITION OF
8 AMERICA, LLC

9 By: _____

10 Court S. Rich
11 Rose Law Group pc
12 7144 East Stetson Drive, Suite 300
13 Scottsdale, Arizona 85251
14 Telephone: 480 505-3937
15 Facsimile: 480 505-3925

ARIZONA PUBLIC SERVICE COMPANY

By: _____

16 Linda J. Benally
17 Pinnacle West Capital Corporation
18 Law Department
19 400 North 5th Street, MS 8695
20 Phoenix, Arizona 85004
21 Telephone: 602 250-3630
22 Facsimile: 602 250-3393
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1 EXHIBIT "A"

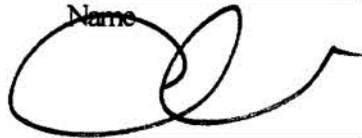
2 NONDISCLOSURE AGREEMENT

3 CONFIDENTIAL INFORMATION

4 I have read the foregoing Protective Agreement dated _____,
5 2016, IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE
6 COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY
7 PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST
8 AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE
9 SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, Docket No. E-01345A-16-
10 0036, and agree to be bound by the terms and conditions of such Agreement.

11 Court Rich

12 Name

13 

14 Signature

15
16 Rose Law Group PC

17 Employer or Firm

18 7144 E. Steuben Dr., Ste 300
19 Scottsdale, AZ 85251

20 Business Address

21 Attorney for EFCA

22 Position or relationship with the Party

23
24 11/10/16

25 Date

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EXHIBIT "B"

NONDISCLOSURE AGREEMENT

HIGHLY CONFIDENTIAL INFORMATION

I have read the foregoing Protective Agreement dated _____,
2016, IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE
COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY
PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST
AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE
SCHEDULES DESIGNED TO DEVELOP SUCH RETURN, Docket No. E-01345A-16-
0036, and agree to be bound by the terms and conditions of such Agreement.

Court Rich

Name



Signature

Rose Law Group PC

Employer or Firm

7144 E. Stetson Dr.; Ste 300
Scottsdale, AZ 85261

Business Address

Attorney for EFCA

Position or relationship with the Party

11/10/16

Date